

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARI S. GUERECA</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>NATIONAL BEEF PACKING CO., LP</b>	)	
Respondent	)	Docket No. <b>1,042,210</b>
	)	
AND	)	
	)	
<b>AMERICAN ZURICH INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier request review of the December 17, 2008 preliminary hearing Order For Compensation entered by Administrative Law Judge Pamela J. Fuller.

**ISSUES**

The Administrative Law Judge (ALJ) found claimant met with personal injury by accident arising out of and in the course of employment with respondent on June 18, 2008, and timely notice of this accident was provided respondent. The ALJ further noted claimant had another fall at work in July 2008 that was not reported but as she continued performing her work after both falls her pain worsened.

Respondent requests review and argues claimant suffered an intervening accident in a fall at work in July 2008 and failed to provide timely notice of that accident. Respondent argues the failure to provide timely notice of that accident bars recovery because the claimant's current condition and requested benefits are related to the July 2008 fall at work.

Claimant argues the ALJ's Order For Compensation should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

It is undisputed claimant suffered accidental injury at work on June 18, 2008, when she slipped on a piece of fat and water. She fell on her knees and hit her head. She injured her knees, back, head, and finger. She sought treatment at the nurse's office after the fall. Claimant would put an ice bag on her knee and a cream on her back as well as take Ibuprofen for pain.

After the June 18, 2008 accident, claimant continued to work and continued to go to the nurse's station to get the bio cream to put on her back. Claimant sustained another fall at work in July 2008 and although she did not report that accident she did state that her fall was witnessed by her supervisor. And that her supervisor told Fernando Castilla, a red helmet, that she had fallen. Claimant further testified that this fall did not worsen her back condition.

K.S.A. 44-520 provides:

**Notice of injury.** Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, **except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary.** The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice. (Emphasis Added).

Respondent argues that the July fall was an intervening accident and failure to provide timely notice of that fall defeats claimant's claim for compensation. This Board Member disagrees.

It was claimant's uncontradicted testimony that the July 2008 fall was witnessed by her supervisor and he told another supervisor that he had witnessed claimant fall. Actual knowledge of the fall renders the giving of notice unnecessary. Consequently, it was not necessary for claimant to provide notice and respondent's argument fails.

Moreover, Dr. Pedro Murati opined that claimant's current condition is a direct result from the accidental injury that occurred on June 18, 2008. Dr. Murati further noted that the July fall did not worsen her low back pain.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>1</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>2</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order For Compensation of Administrative Law Judge Pamela J. Fuller dated December 17, 2008, is affirmed.

**IT IS SO ORDERED.**

Dated this 27th day of February 2009.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant  
Shirla R. McQueen, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge

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<sup>1</sup> K.S.A. 44-534a.

<sup>2</sup> K.S.A. 2008 Supp. 44-555c(k).